

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

DELROY JOSIAH-EL-BEY)	
<i>also known as Delroy Josiah,</i>)	
Plaintiff,)	Civil Action No. 7:22-cv-00597
)	
v.)	
)	By: Elizabeth K. Dillon
DELROY JOSIAH, <i>et al.</i> ,)	United States District Judge
Defendants.)	

MEMORANDUM OPINION AND ORDER

Delroy Josiah-El-Bey, an inmate in the custody of the Virginia Department of Corrections and proceeding *pro se*, commenced this civil action under 42 U.S.C. § 1983. By memorandum opinion and order, the court dismissed the complaint. In doing so, it expressly noted that plaintiff's claims that he was unjustly imprisoned and otherwise improperly being treated as a slave, all of which were based on his status as a "Moorish-American," failed to state a claim and were frivolous. Nonetheless, the court recognized that two of his claims might be cognizable with additional factual matter. (Dkt. No. 4.) Thus, the court permitted Josiah-El-Bey to file an amended complaint, if he so chose, limited to a claim based on allegations concerning the use of his preferred name and a claim of retaliation stemming from the loss of his prison employment. (Dkt. Nos. 4, 5.)

In response, El-Bey has filed an amended complaint asserting only a retaliation claim. (Dkt. No. 6.) He also has filed what the court construes as a letter motion to reconsider. (Dkt. No. 6-1.) In it, he continues to explain what he believes is the significance of his Moorish-American status. He also claims, however, that he is a "Moorish-Moslem" and that some of his claims are based on this religion, as opposed to his nationality as a "Moorish-American," although the two are intertwined and his "identity is integral to his religious beliefs." (Ltr. Mot.

Reconsider 2–3, Dkt. No. 6-1.) He claims that the court would not have failed to permit a claim based on religion if he were a Jew, for example. (Ltr. Mot. 2, Dkt. No. 6-1.)

Given his statements in his letter, the court hereby GRANTS IN PART his motion to reconsider, and it will modify slightly its prior order. If he chooses, Josiah-El-Bey may file a second amended complaint within thirty days. His second amended complaint may contain a claim based on allegations concerning the use of his preferred name and also may contain a claim of retaliation stemming from the loss of his prison employment. In addition, the court will modify its prior order and will allow Josiah-El-Bey to include a claim that his religious rights are being violated by particular actions of particular defendants. Any such religion-based claim must explain how his religious rights are being violated or how his ability to practice his religion is being hampered by defendants. What he may *not* include is the sort of sweeping claim that his incarceration itself violates his religious beliefs, that his religion teaches that his incarceration is illegal or invalid, that he is falsely imprisoned, that his imprisonment renders him a “slave” in violation of his religious beliefs, or similar sweeping arguments. But if he is being denied the ability to engage in particular religious practices, he may include that type of limited religious-based claim in his second amended complaint.

The court amends its prior order accordingly.

ORDER

It is ORDERED that Josiah-El-Bey is hereby given the opportunity to file a second amended complaint within thirty days, but the second amended complaint may contain only allegations concerning the use of his preferred name, a retaliation claim based on the loss of his prison employment, and any claims alleging that specific or particular religious rights are being violated.

Any second amended complaint that plaintiff files must be a new pleading, complete in all respects, which stands by itself without reference to any earlier-filed complaint, documents, or attachments. **His prior filings will not be included or considered as part of his second amended complaint.** Plaintiff's second amended complaint must list his claims separately against each defendant and shall provide specific facts to support each claim. It should allege specifically what each defendant did or failed to do that he believes violated his constitutional rights.

If plaintiff does not want to file a second amended complaint, then he should file a notice within thirty days stating that he will proceed with his current amended complaint (Dkt. No. 6.) **If plaintiff does not file a second amended complaint that complies with the instructions in this order and does not file a notice that he wants to proceed with his current amended complaint, the court will presume that he has lost interest in pursuing this case, and it may be dismissed.**

The clerk shall send to plaintiff copies of this memorandum opinion and order and a blank complaint form that he may use to file a second amended complaint.

Entered: February 9, 2023.

/s/ Elizabeth K. Dillon

Elizabeth K. Dillon
United States District Judge

SECOND AMENDED COMPLAINT
IN THE UNITED STATES DISTRICT COURT
Western District of Virginia

Dillon

District Judge
(Assigned by Clerk's Office)

Hoppe

Mag. Referral Judge
(Assigned by Clerk's Office)

CIVIL ACTION NO. 7:22cv00597
(Assigned by Clerk's Office)

For use by Inmates filing a Complaint under

CIVIL RIGHTS ACT, 42 U.S.C. §1983 or BIVENS v. SIX UNKNOWN NAMED AGENTS OF FED. BUREAU OF NARCOTICS, 403 U.S.C. §388 (1971)

Delroy Josiah-El-Bey

1028534

Plaintiff Name
v.

Inmate No.

Defendant Name & Address

Defendant Name & Address

Defendant Name & Address

Defendant Name & Address

Defendant Name & Address

Defendant Name & Address

**IF YOU NEED TO ADD MORE DEFENDANTS, USE A SEPARATE SHEET OF PAPER, AND PUT
NAME AND ADDRESS FOR EACH NAMED DEFENDANT.
TITLE THE SECOND PAGE "CONTINUED NAMED DEFENDANTS"**

A. Where are you now? Name and Address of Facility:

B. Where did this action take place?

C. Have you begun an action in state or federal court dealing with the same facts involved in this complaint?

_____ Yes _____ No

If your answer to A is Yes, answer the following:

1. Court: _____

2. Case Number: _____

D. Have you filed any grievances regarding the facts of this complaint?

_____ Yes _____ No

1. If your answer is Yes, indicate the result:

2. If your answer is No, indicate why:

E. Statement of Claim(s): State briefly the facts in this complaint. Describe what action(s) each defendant took in violation of your federal rights and include the relevant dates and places. **Do not give any legal arguments or cite any cases or statutes.** If necessary, you may attach additional page(s). Please write legibly.

Claim #1 – Supporting Facts – Briefly tell your story without citing cases or law:

Claim #2 – Supporting Facts – Briefly tell your story without citing cases or law:
(Additional Supporting Facts may be placed on a separate paper titled ADDITIONAL SUPPORTING FACTS)

- F. State what relief you seek from the Court. Make no legal arguments and cite no cases or statutes.

- G. If this case goes to trial, do you request a trial by jury? Yes _____ No _____

- H. If I am released or transferred, I understand it is my responsibility to immediately notify the court in writing of any change of address **after** I have been released or transferred or my case may be dismissed.

DATED: _____ SIGNATURE: _____

VERIFICATION:

I, _____, state that I am the plaintiff in this action, and I know the content of the above complaint; that it is true of my own knowledge, except as to those matters that are stated to be based on information and belief, and as to those matters, I believe them to be true. I further state that I believe the factual assertions are sufficient to support a claim of violation of constitutional rights. Further, I verify that I am aware of the provisions set forth in 28 U.S.C. §1915 that prohibit an inmate from filing a civil action or appeal, if the prisoner has, on three or more occasions, while incarcerated brought an action or appeal in federal court that is dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless the prisoner is imminent danger of serious physical injury. I understand that if this complaint is dismissed on any of the above grounds, I may be prohibited from filing any future actions without the pre-payment of the filing fees. I declare under penalty of perjury the foregoing to be true and correct.

DATED: _____ SIGNATURE: _____

When submitting handwritten documents, leave enough space at the top, the bottom, and the sides. Those documents are scanned into the Court's database by hand, which is then the official record.

Please do not use tape or staples on documents.